

REMARKS

The Office Action mailed October 26, 2004, has been received and reviewed. Claims 1 through 6, and 8 through 15 are currently pending in the application. Claims 1 through 6, and 8 through 15 stand rejected. Applicants respectfully request reconsideration of the application for the reasons stated herein.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 5,961,437 to Smith et al. in view of U.S. Patent No. 6,016,714 to Smith et al.

Claims 1, 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith et al. (U.S. Patent No. 5,961,437) in view of Smith et al. (U.S. Patent No. 6,016,714). Applicants respectfully traverse this rejection, as hereinafter set forth.

The Office Action first discusses a rejection of claims 1 and 5. Applicants believe this was likely a typographical error. This seems apparent to Applicants because the Office Action next discusses a rejection of claims 2-6, and 9-13, and a rejection of claims 14 and 15. As a result, claim 5 is mentioned twice and claim 8 is not mentioned at all. Therefore, Applicants believe the first discussion was meant to include claims 1 and 8, rather than claims 1 and 5.

In either case, Applicants assert that the 35 U.S.C. § 103(a) obviousness rejections of claims 1-6 and claims 8-15 are improper because every rejection cited in the Office Action uses U.S. Patent No. 6,016,714 to Smith et al. (hereinafter Smith '714) as a reference. Applicants believe that Smith '714 does not qualify as a prior art reference useable under 35 U.S.C. § 103(a).

The present application is a divisional of application No. 09/418681, filed on October 14, 1999 (now Pat. No. 6,648,552). Therefore, the present application claims a priority date of October 14, 1999. On the other hand, Smith '714 was published on January 25, 2000, after the priority date of the present application. "Smith '714 does not qualify as a prior art reference under 35 U.S.C. § 102(b) because it was not published more than one year before the present application's priority date of October 14, 1999.

Also, “[i]n order to apply a reference under 35 U.S.C. § 102(e), the inventive entity of the application must be different than that of the reference” (MPEP § 706.02(a) II.B). Smith ‘714 has the following inventors: Smith, Ann Marie (Pocatello, ID); Gardner, Bradley M. (Idaho Falls, ID); Kostelnik, Kevin M. (Idaho Falls, ID); Partin, Judy K. (Idaho Falls, ID); Lancaster, Gregory D. (Idaho Falls, ID); Pfeifer, May Catherine (Idaho Falls, ID). The present application has the same named inventors. Therefore, Smith ‘714 does not qualify as a prior art reference under 35 U.S.C. § 102(e) because both it and the present application have the same inventive entity.

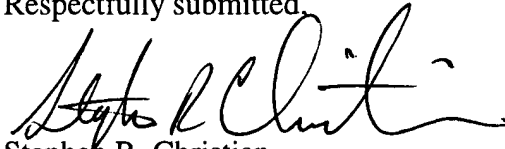
“For 35 U.S.C. § 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application, and must not be Applicant’s own work” (MPEP § 706.02(a) II.C, last sentence). Smith ‘714 does not have a publication date (January 25, 2000) earlier in time than the effective filing date of the present application (October 14, 1999) and therefore does not qualify as a prior art reference under 35 U.S.C. § 102(a).

Finally, Applicants assert that 35 U.S.C. § 102 subsections (c), (d), (f), and (g) are not applicable to Smith ‘714 because, among other reasons, it was not abandoned, and it does not have any foreign counterparts. Therefore, because Smith ‘714 does not qualify as a prior art reference under any subsections of 35 U.S.C. § 102, it cannot be used as a reference in a 35 U.S.C. § 103 obviousness rejection. . .

CONCLUSION

Claims 1-6 and 8-15 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



Stephen R. Christian
Registration No. 32,687
Attorney for Applicants
P.O. Box 1625
Idaho Falls, ID 83415-3899
Phone: (208) 526-9140
Fax: (208) 526-8339

Date: 14 JAN 05